

NEW YORK STOCK EXCHANGE, INC.

EXCHANGE HEARING PANEL DECISION 04-137

August 26, 2004

DONNA JACKSON KILLOUGH
FORMER REGISTERED REPRESENTATIVE

* * *

Caused a violation of Exchange Rule 440 and SEC Rule 17a-4(b)(4) promulgated under the '34 Act in that she caused her firm to make and preserve inaccurate books and records – Consent to censure and five-month bar.

Appearances:

For the Division of Enforcement
Martin S. Mazur, Esq.
Catherine P. Dawson, Esq.

For the Respondent
Donna Jackson Killough
pro se

* * *

An Exchange Hearing Panel met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and Donna Jackson Killough, a former registered representative with Merrill Lynch, Pierce, Fenner & Smith Inc. (the "Firm"). Without admitting or denying guilt, Ms. Killough consented to a finding by the Hearing Panel that she caused a violation of Exchange Rule 440 and SEC Rule 17a-4(b)(4) promulgated under the Securities Exchange Act of 1934 in that she caused her member organization employer to make and preserve inaccurate books and records by submitting nineteen fictitious Letters of Authorization.

For the sole purpose of settling this disciplinary proceeding, the Division of Enforcement and Ms. Killough stipulate to certain facts, the substance of which follows:

Background and Jurisdiction

1. Killough was born October 2, 1953. She entered the securities industry in October 1980, with the Firm and was approved as a registered representative on November 23, 1983. In March 1990, Killough temporarily left the Firm, returning in February 1992, when she again was approved as a registered representative [March 12, 1992]. During the entire period, from October 1980 to her discharge on April 11, 2002, Killough was employed in various clerical positions, including sales assistant or Client Associate ("CA").
2. Killough is not currently employed in the securities industry.

3. On May 15, 2002, Enforcement received a Form U-5 Uniform Termination Notice for Securities Industry Registration (“Form U-5”) from the Firm reporting that Killough was discharged “when the Firm learned that she transferred funds from her husband’s single name account to their joint account without his consent”.
4. By letter dated November 25, 2002, which Killough received, Enforcement advised her that it was investigating the matter described in the Form U-5.

Overview

5. During the period December 1, 2000 to October 31, 2001, on at least nineteen occasions, Killough, who was involved in a pre-divorce dispute with her husband, transferred funds [cash and three Certificates of Deposit (“CD”)] from her husband’s individual securities account at her member organization employer to their joint securities account at the same Firm without his knowledge or authorization. To effect the transfers, Killough copied a Letter of Authorization (“LOA”) which her husband had previously signed, and each time altered the date and the amount.

Caused a Violation of Exchange Rule 440 and SEC Rule 17a-4(b)(4)

6. Exchange Rule 440 requires, in pertinent part, that every member organization “shall make and preserve books and records as the Exchange may prescribe and as prescribed by Rule 17a-3. The recordkeeping format, medium and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934.” Rule 240.17a-4 sets forth additional records to be preserved, including communications received and sent, as well as the period of time the required records must be retained.
7. Killough, married in 1978 and divorced in 2003, testified that in December 2000, she was a married California resident, sharing a home with her husband and child, and considered the funds in her husband’s account to be joint property under California’s community property laws.
8. On nineteen occasions during the period December 1, 2000 through October 31, 2001, Killough transferred funds from her husband’s individual account to their joint account without his authorization by copying and altering an LOA which he had previously signed. (The funds transferred were used, among other things, to pay their daughter’s tuition, household and other expenses.)
9. Killough’s actions caused the Firm to make and preserve inaccurate books and records.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Ms. Killough guilty as set forth above by unanimous vote.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Ms. Killough of a censure and a five month bar from membership, allied membership, approved person status, and from employment or association in any capacity with any member or member organization.

For the Hearing Panel

Vincent F. Murphy
Hearing Officer